

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 2688 - SB 2862

March 14, 2022

SUMMARY OF BILL: Creates a Class D felony offense to intimidate, or attempt to intimidate, a person involved in a legal proceeding by use of physical force or a threat of physical force for outlined purposes. Enhances the penalty for engaging in certain criminal acts at the residence or workplace of a person involved in a legal proceeding, for purposes of intimidation.

FISCAL IMPACT:

Increase State Expenditures – \$883,700 Incarceration

Decrease Local Expenditures – \$25,600/FY22-23 and Subsequent Years

Assumptions:

- The proposed legislation creates a Class D felony offense to intimidate, or attempt to intimidate, a person involved in a legal proceeding by use of physical force or a threat of physical force for the purpose of:
 - Influencing the testimony, vote, decision, or opinion of the person;
 - Inducing the person to withhold documents;
 - Inducing the person to avoid participating;
 - Inducing the person to alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in a legal proceeding; or
 - Hindering, delaying or preventing communication to a law enforcement officer or judge information relating to the possible commission of an offense or a violation of conditions of probation, parole, or release pending a judicial proceeding.
- Further, the proposed legislation enhances the penalty to a Class D felony offense to intimidate, or attempt to intimidate, a person involved in a legal proceeding by engaging in any of the following criminal acts at the residence or workplace of a person:
 - Criminal Trespass;
 - Aggravated Criminal Trespass;
 - Vandalism;
 - Disorderly Conduct;
 - Rioting; or
 - Aggravated Rioting.

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Use of Physical Force

- This analysis assumes individuals charged with the use of physical force or threat of use of physical force against a person involved in a legal proceeding pursuant to this legislation would be charged with the offense of assault pursuant to Tenn. Code Ann. § 39-13-101 under current law.
- Pursuant to Tenn. Code Ann. § 39-13-101(b)(1)(A) – (B), assault by intentionally, knowingly, or recklessly causing bodily injury to another or intentionally or knowingly causing another to reasonably fear imminent bodily injury, is a Class A misdemeanor offense, punishable by incarceration and a fine not to exceed \$15,000.
- Based on information provided by the Administrative Office of the Courts (AOC), there has been an average of 560.9 Class A misdemeanor convictions of assault in each of the last 10 years.
- This analysis assumes that only 10 percent of misdemeanor convictions are at the state court level. As a result, it is estimated that there are 5,609 convictions ($560.9 / 10.0\%$) per year for Class A misdemeanor assault.
- It can be reasonably assumed that one half of one percent or 28 ($5,609 \times 0.05\%$), of such convictions will be classified as a Class D felony under this legislation. The average time served for a Class D felony offense is 1.11 years.
- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 0.74 percent per year for each of the past 10 years (from 2010 to 2020).
- The weighted average operational costs per day are estimated to be \$51.36 for inmates housed at state facilities and \$48.77 for inmates housed at local facilities.
- The increase in incarceration costs are estimated to be the following over the next ten-year period:

Increase in State Expenditures	
Amount	Fiscal Year
\$ 513,600	FY22-23
\$ 575,500	FY23-24
\$ 577,000	FY24-25
\$ 582,700	FY25-26
\$ 586,900	FY26-27
\$ 592,700	FY27-28
\$ 594,000	FY28-29
\$ 599,800	FY29-30
\$ 604,100	FY30-31
\$ 610,000	FY31-32

- Pursuant to Tenn. Code Ann. § 9-4-210, recurring cost increases are to be estimated on the highest of the next ten fiscal years; therefore, the recurring increase in incarceration costs will be \$610,000.
- It is assumed that an individual convicted of a Class A misdemeanor offense spends an average of 15 days in a local jail.
- Based on cost estimates provided by local government entities throughout the state and reported bed capacity within such facilities, the weighted average cost per day to house an inmate in a local jail facility is \$60.69.

- The recurring decrease in expenditures to local governments is estimated to be \$25,490 (28 convictions x \$60.69 x 15) in FY22-23 and subsequent years.

Criminal Trespass

- Based on information provided by the AOC, there has been an average of 141 convictions in each of the last 5 years for the Class C misdemeanor offense under Tenn. Code Ann. § 39-14-405(g) for criminal trespass.
- This analysis assumes that only 10 percent of misdemeanor convictions are at the state court level. As a result, it is estimated that there are 1,410 convictions (141 / 10.0%) per year for Class C misdemeanor criminal trespass.
- It can be reasonably assumed that one half of one percent, or 7.05 (1,410 x 0.05%), of such convictions will be classified as a Class D felony under this legislation.
- The average time served for a Class D felony offense is 1.11 years.
- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 0.74 percent per year for each of the past 10 years (from 2010 to 2020).
- The weighted average operational costs per day are estimated to be \$51.36 for inmates housed at state facilities and \$48.77 for inmates housed at local facilities.
- The increase in incarceration costs are estimated to be the following over the next ten-year period:

Increase in State Expenditures	
Amount	Fiscal Year
\$ 129,300	FY22-23
\$ 144,900	FY23-24
\$ 145,200	FY24-25
\$ 146,600	FY25-26
\$ 147,600	FY26-27
\$ 149,000	FY27-28
\$ 149,300	FY28-29
\$ 150,700	FY29-30
\$ 151,700	FY30-31
\$ 153,100	FY31-32

- Pursuant to Tenn. Code Ann. § 9-4-210, recurring cost increases are to be estimated on the highest of the next ten fiscal years; therefore, the recurring increase in incarceration costs will be \$153,100.
- Any decrease in local incarceration expenditures will be not significant.

Aggravated Criminal Trespass

- Pursuant to Tenn. Code Ann. § 39-14-406(c), aggravated criminal trespass is a Class B misdemeanor. The penalty is enhanced to a Class E felony when committed on the residential property belonging to or occupied by a law enforcement officer, active duty member of the military, judge, or elected or appointed federal, state, or local official, with the intent to harass a person due to the person's professional status.
- Based upon information provided by the Department of Correction (DOC), there has been an average of zero admissions in each of the last 10 years for the Class E felony offense under Tenn. Code Ann. § 39-14-406(c)(3) for aggravated criminal trespass.

- Based on information provided by the AOC, there has been an average of 41.6 convictions in each of the last 5 years for the Class B misdemeanor offense under Tenn. Code Ann. § 39-14-406(c)(1) for aggravated criminal trespass.
- This analysis assumes that only 10 percent of misdemeanor convictions are at the state court level. As a result, it is estimated that there are 416 convictions (41.6 / 10.0%) per year for Class B misdemeanor aggravated criminal trespass.
- It can be reasonably assumed that one half of one percent or 2.08 (416 x 0.05%), of such convictions will be classified as a Class D felony under this legislation.
- The average time served for a Class D felony offense is 1.11 years.
- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 0.74 percent per year for each of the past 10 years (from 2010 to 2020).
- The weighted average operational costs per day are estimated to be \$51.36 for inmates housed at state facilities and \$48.77 for inmates housed at local facilities.
- The increase in incarceration costs are estimated to be the following over the next ten-year period:

Increase in State Expenditures	
Amount	Fiscal Year
\$ 38,200	FY22-23
\$ 42,800	FY23-24
\$ 43,000	FY24-25
\$ 43,600	FY25-26
\$ 44,000	FY26-27
\$ 44,500	FY27-28
\$ 44,700	FY28-29
\$ 45,200	FY29-30
\$ 45,600	FY30-31
\$ 46,100	FY31-32

- Pursuant to Tenn. Code Ann. § 9-4-210, recurring cost increases are to be estimated on the highest of the next ten fiscal years; therefore, the recurring increase in incarceration costs will be \$46,100.
- It is assumed that an individual convicted of a Class B misdemeanor offense will spend an average of 1 day in a local jail.
- The weighted average cost per day to house an inmate in a local jail facility is \$60.69.
- The recurring decrease in expenditures to local governments is estimated to be \$126 (2.08 convictions x \$60.69 x 1) in FY22-23 and subsequent years.

Vandalism

- Pursuant to Tenn. Code Ann. § 39-14-408(b)(1), the offense of vandalism in instances where a person knowingly causes damage to or the destruction of any real or personal property of another or of the state, the United States, any county, city, or town knowing that the person does not have the owner's effective consent is punished as theft under Tenn. Code Ann. § 39-14-105, after determining value under Tenn. Code Ann. § 39-11-106.

- Pursuant to Tenn. Code Ann. § 39-11-106(a)(39), value means the fair market value of the property or service at the time and place of the offense, or if the fair market value of the property cannot be ascertained, the cost of replacing the property within a reasonable time after the offense.
- Pursuant to Tenn. Code Ann. § 39-14-105(a)(1)-(2), theft of property or services is a Class A misdemeanor if the value of the property or services is \$1,000 or less, and a Class E felony if the value of the property or services is more than \$1,000 but less than \$2,500.
- This analysis assumes an individual charged with vandalism pursuant to this legislation would be charged with the Class A misdemeanor or Class E felony offense of theft of property or services pursuant to Tenn. Code Ann. § 39-14-105 under current law.
- Based on information provided by the AOC, there has been an average of 1.4 convictions in each of the last 5 years for the Class A misdemeanor offense for theft under \$1,000.
- Based upon information provided by the DOC, there has been an average of 4.10 admissions in each of the last 10 years for the Class E felony offense for theft between \$1,000 and \$2,500, with an estimated average time served of 0.72 years.
- Due to the low number of convictions, any impact resulting from enhancing the penalty for Class A misdemeanor or Class E felony vandalism pursuant to this legislation is estimated to be not significant.

Disorderly Conduct

- Based on information provided by the AOC, there has been an average of 68.8 convictions in each of the last 5 years for the Class C misdemeanor offense under Tenn. Code Ann. § 39-17-305 for disorderly conduct.
- This analysis assumes that only 10 percent of misdemeanor convictions are at the state court level. As a result, it is estimated that there are 688 convictions (68.8 / 10.0%) per year for Class C misdemeanor disorderly conduct.
- It can be reasonably assumed that one half of one percent, or 3.44 (688 x 0.05%), of such convictions will be classified as a Class D felony under this legislation.
- The average time served for a Class D felony offense is 1.11 years.
- Based on population data from the U.S. Census Bureau, population growth in Tennessee averaged 0.74 percent per year for each of the past 10 years (from 2010 to 2020).
- The weighted average operational costs per day are estimated to be \$51.36 for inmates housed at state facilities and \$48.77 for inmates housed at local facilities.
- The increase in incarceration costs are estimated to be the following over the next ten-year period:

Increase in State Expenditures	
Amount	Fiscal Year
\$ 63,100	FY22-23
\$ 70,600	FY23-24
\$ 70,700	FY24-25
\$ 71,300	FY25-26
\$ 71,700	FY26-27
\$ 72,300	FY27-28
\$ 72,300	FY28-29
\$ 73,100	FY29-30
\$ 73,700	FY30-31
\$ 74,500	FY31-32

- Pursuant to Tenn. Code Ann. § 9-4-210, recurring cost increases are to be estimated on the highest of the next ten fiscal years; therefore, the recurring increase in incarceration costs will be \$74,500.
- Any decrease in local incarceration expenditures will be not significant.

Rioting

- Based on information provided by the AOC, there has been an average of 1.4 convictions in each of the last 5 years for the Class A misdemeanor offense under Tenn. Code Ann. § 39-17-302(b) for rioting.
- There will not be a sufficient change in the number of prosecutions for state or local government to experience any significant change in revenue or expenditures.

Aggravated Rioting

- Based upon information provided by the DOC, there has been an average of 0.10 admissions in each of the last 10 years for the Class E felony offense under Tenn. Code Ann. § 39-17-303(b)(1) for aggravated rioting with an estimated average time served of 0.48 years.
- Due to the low number of admissions, any impact resulting from enhancing the penalty for aggravated rioting pursuant to this legislation is estimated to be not significant.

Total Impact

- The total recurring increase in state incarceration expenditures will be \$883,700 (\$610,000 + \$153,100 + \$46,100 + \$74,500).
- The total decrease in local expenditures is estimated to be \$25,616 (\$25,490 + \$126) in FY22-23 and subsequent years.
- Based on the Fiscal Review Committee's 2008 study and the Administrative Office of the Courts' 2012 study on collection of court costs, fees, and fines, collection in criminal cases is insignificant. The proposed legislation will not significantly change state or local revenue.
- The estimated fiscal impact of the proposed legislation does not consider the availability of beds in state and local facilities, but is based solely on the current operating costs of state facilities and the reimbursement rates for local facilities as is required by Tenn. Code Ann. § 9-4-210.

- All calculations used in completion of this fiscal note are available upon request.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

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